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March 9, 2009

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: ***Notice of Ex Parte Communication,***
WC Docket No. 05-337, CC Docket No. 96-45

Dear Ms. Dortch:

Yesterday, Julia Tanner of MTPCS, LLC d/b/a Cellular One and I met with Richard Lerner and Daniel Daly of the Office of the Managing Director and Jennifer McKee of the Wireline Competition Bureau on behalf of the Universal Service for America Coalition ("USA Coalition") to discuss the issues set forth in the attached presentation (Attachment A), as well as implementation of the broadband stimulus legislation and the operation of the interim USF cap.

With respect to the operation of the interim cap, we discussed the need for the Federal Communications Commission ("FCC" or "Commission") to provide guidance to the Universal Service Administrative Company ("USAC") regarding the calculation of the interim cap the Commission imposed on high cost support for competitive eligible telecommunications carriers ("ETCs").¹ The *Interim Cap Order* established a static, interim cap:

¹

See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd 8834 (rel. May 1, 2008) ("*Interim Cap Order*")

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“[A]nnual support for competitive ETCs in each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008, on an annualized basis.”²

The *Interim Cap Order* further set forth the manner in which support must be calculated:

Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would have received under the existing (uncapped) per-line identical support rule, and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.³

Under this two-step approach of calculating support, the entry or exit of any specific ETC in any given state has no effect on the available state cap support amount. Indeed, the number of ETCs in a given state is only relevant to the extent it increases or decreases the state uncapped support amount (*i.e.*, by adding or subtracting additional supported lines within the state). The Commission explicitly confirmed in the *Interim Cap Order* that the number of ETCs has no effect on the cap level:

Although the interim cap that we adopt today applies only to the amount of support available to competitive ETCs, it does not restrict the number of competitive ETCs that may receive support.

² *Id.* at 8837, ¶ 5.

³ *Id.* at 8845, ¶ 27.

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In fact, as part of this Order, we grant, to the extent described in Appendix B, numerous applications for ETC designation currently pending before the Commission. . . . *These designations, however, do not affect the amount of support available to competitive ETCs, which is limited by the interim cap we adopt in this Order.*⁴

As the Commission explained, additional ETC designations, and thus withdrawal of certain ETCs from the market, have no impact on the available state cap support amount.

A letter containing an incorrect interpretation of the *Interim Cap Order* and the *Verizon Wireless and Alltel Merger Order* was recently sent by USAC to a USA Coalition member.⁵ The letter stated in relevant part as follows:

All Verizon Wireless and Alltel High Cost support payments subject to the reduction provisions included in the Verizon Wireless and Alltel Merger Order are effectively removed from the CETC interim cap and do not “free up” additional dollars for other CETCs in any jurisdiction.⁶

This statement is fundamentally inconsistent with the explicit requirements of the *Interim Cap Order*. Moreover, the Commission lacks the authority to amend the two-step approach of calculating support established in the *Interim Cap Order*, WC Docket No. 05-337 and CC Docket No. 96-45, by adopting a subsequent order in an unrelated proceeding (WT Docket No. 08-95) to consider the merger application of two individual companies.⁷ It is well established that the Commission declines to address in merger proceedings matters in which the public

⁴ *Id.* at 8850, ¶ 39 (emphasis added).

⁵ See, e.g., Letter from Karen Majcher, USAC, to Mr. Donald Evans, Fletcher, Heald & Hildreth, P.L.C. (Feb. 25, 2009) (Attachment B) (citing *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Management and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, FCC 08-258 (rel. Nov. 10, 2008) (“*Verizon Wireless/Alltel Merger Order*”)).

⁶ *Id.* at 1-2.

⁷ The unrelated docket numbers illustrates that any attempt to modify the *Interim Cap Order* in the *Verizon Wireless/Alltel Merger Order* would be fatally flawed due to lack of notice and opportunity to comment, among other issues.

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interest would be served better through consideration in proceedings of general applicability.⁸ Accordingly, contrary to the suggestion of USAC, the Commission could not have modified a generally applicable rule on universal service support by adopting, *sub silentio*, a third-party carrier's own interpretation of Commission policy submitted through an *ex parte* letter filed in a merger proceeding.⁹ Therefore, the Commission should provide guidance to USAC confirming that the *Interim Cap Order* established a static, interim funding cap for each state, the level of which is not affected by the number of ETCs receiving support in that state.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter and the presentation (Attachment A) that was distributed during the meeting is being filed via ECFS with your office.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd D. Daubert", with a long horizontal line extending to the right.

Todd D. Daubert
Counsel to the USA Coalition

cc: Richard Lerner
Jennifer McKee
Daniel Daly

⁸ See *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, WC Docket No. 06-74, 22 FCC Rcd 5662, 5758 (2007) ("The Commission previously has declined to address in merger proceedings matters in which the public interest would be better served through consideration and resolution in broader proceedings of general applicability.").

⁹ See *Verizon Wireless/Alltel Merger Order* ¶ 196.

ATTACHMENT

A



Universal Service Benefits America

CC Docket No. 96-45
WC Docket No. 05-337
March 2009



Universal Service Is The Goal

- The public interest is served by the universal availability of affordable service
 - The greater the number of people on the network, the more useful the network is
 - Universal availability of essential telecommunications services is crucial for education, public health, public safety and the economy
- The universal service fund supports the provision of services where they otherwise would not be available or affordable
- The Telecom Act mandates that universal service evolve
- Evolution of the current universal service mechanism is necessary to accomplish the goal of universal service



Universal Service Promotes Economic Growth

- The availability of affordable telecommunications services facilitates job creation
 - The ability to communicate throughout the nation fosters economic growth
 - If affordable telecommunications services were ubiquitously available, individuals and businesses could relocate to the most economically rational location feasible
- Wireless services are crucial for overall economic growth
 - In 2004, productivity gains resulting from the availability of wireless services amounted to more than \$8 billion.
 - 40% of employers believe that wireless services are so valuable that they purchase wireless services for their employees
- The wireless industry also creates jobs directly
 - 500,000 employees are directly employed by the wireless industry
 - An additional 1 million individuals are employed by companies that support the wireless industry



Service Is Not Universal Today

- Wireless penetration rates in rural areas lag penetration rates in non-rural areas
 - In 2007, the penetration rate for wireless services was 86% nation-wide but less than 75% in rural areas
- Broadband wireless penetration rates are lower throughout the United States than they are in many countries



A New Perspective Is Necessary

- Beneficial evolution of the universal service support mechanisms cannot occur if the focus is on the mechanisms themselves rather than the goals the mechanisms are meant to achieve
- Funding should not be the sole focus, because lack of funding is not the sole obstacle to universal service
- Support must be available where needed to achieve or maintain universal service: In these areas, the support mechanism should facilitate growth and maintenance of the network rather than create additional obstacles to distributing or accessing support
- Ensuring that support is both available where needed and used properly to achieve the goals of universal service is far more important than the precise manner by which funds are distributed



Clearing Obstacles Should Be the Focus

- The best way to achieve universal service is to focus on removing the obstacles that service providers face
- We must ask why certain areas are unserved or underserved and identify the specific obstacles to serving those areas
 - Obstacles to universal wireless service in unserved or underserved areas can include:
 - Lack of available spectrum
 - Lack of funding for capital expenditures (e.g., significant backhaul or transport costs)
 - Lack of funding for operational expenditures
 - Burdensome, costly, lengthy, discriminatory, vague or arbitrary regulatory requirements (e.g., the interim funding cap)
 - Unavailability of Roaming
 - Unavailability of Handsets
 - Lack of sufficient access to necessary rights of way or slow permit approvals process
- Once the obstacles to universal service have been identified, those obstacles should be eliminated to the greatest extent possible
- Under no circumstances should government rules and policies create additional obstacles to service deployment



A Coherent National Strategy Is Crucial

- The universal service support mechanisms will play a crucial role in the national strategy mandated by the economic stimulus legislation
- The universal service support mechanisms should compliment the funding made available in the stimulus legislation
 - Support for ongoing operation and maintenance of capital expenditures made possible by the stimulus legislation will be necessary
 - Overly-burdensome regulation would negatively impact the market
- The perfect should not be the enemy of the good
 - The universal service mechanisms should reflect the recognition in the stimulus legislation that mandating the provision of specific speeds could slow deployment of wireless broadband services



Wireless Broadband Should be Facilitated

- Wireless broadband services should be supported without mandating specific minimum speeds
- The FCC should permit, but not require, ETCs who voluntarily agree to provide the transmission component of broadband Internet access as a telecommunications service to use support for broadband services.
 - Under current FCC rules, a provider of broadband Internet services can voluntarily agree to offer the underlying transmission component of Internet access as a telecommunications service (*i.e.*, as a common carrier service).



The USA Coalition

- Membership:

- Carolina West Wireless
- Cellular South
- Mobi PCS
- Thumb Cellular
- MTPCS, LLC d/b/a Cellular One
- Corr Wireless Communications
- SouthernLINC Wireless

- For more information, contact:

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ATTACHMENT B



February 25, 2009

via U.S. Mail

Mr. Donald J. Evans
Fletcher, Heald & Hildreth, P.L.C
11th Floor, 1300 North 17th Street
Arlington, VA 22209

RE: Re-Distribution of Alltel USF Funds

Dear Mr. Evans:

I am writing in response to your recent letter to Scott Barash, Acting Chief Executive Officer of USAC, dated January 27, 2009, regarding the significant decrease in Corr Wireless Communications, LLC's (Corr Wireless') High Cost support and the potential impact of the Verizon Wireless and Alltel merger on High Cost support.

Corr Wireless' significant decrease in High Cost support is a direct result of the Competitive Eligible Telecommunications Carrier (CETC) interim cap. With the implementation of the interim CETC cap, all CETCs experienced a twenty-seven percent (27%) reduction in Interstate Access Support (IAS) because of the creation of separate IAS pools for incumbent and competitive carriers. In addition to the IAS reduction, all CETCs in the state of Alabama experienced an estimated fifty-seven percent (57%) reduction in High Cost support in the first quarter 2009. This reduction in support is due to newly designated CETCs filing for High Cost support that were not eligible to receive support as of the established date of the interim cap baseline, i.e. the March 2008 High Cost support payments annualized.

The *Verizon Wireless and Alltel Merger Order*¹ includes no provisions for the redistribution of support to other CETCs. In fact, the *Order* specifically states that the reduction in payments to Verizon Wireless and Alltel will not result in an increase in High Cost Support payments to other CETCs.² All Verizon Wireless and Alltel High Cost support payments subject to the reduction provisions included in the *Verizon*

¹ See *In the Matter of Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings, LLC, For Consent to Transfer Control of Licenses, Authorization, and Spectrum manager and De Facto Transfer Leasing Arrangements, and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, (Verizon Wireless and Alltel Merger Order)* FCC 08-258, (rel. November 10, 2008).

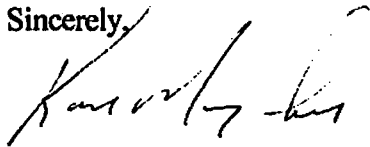
² See *Verizon Wireless and Alltel Merger Order* FCC 08-258, (rel. November 10, 2008), para. 196.

Mr. Donald J. Evans
February 25, 2009
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Wireless and Alltel Merger Order are effectively removed from the CETC interim cap and do not "free up" additional dollars for other CETCs in any jurisdiction.

If you have any additional questions, please feel free to contact me or someone on my High Cost staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Majcher", written over a horizontal line.

Karen Majcher
Vice President
High Cost and Low Income Division

cc: Scott Barash